

§ 601.108

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upon, the 10-day limitation is suspended. If agreement cannot be reached, the supplier has 10 days to lodge its disagreement with the SDR Official.

[75 FR 1542, Jan. 12, 2010]

§ 601.108 SDR Official disagreement resolution.

(a) *General.* If a disagreement under § 601.107 is not resolved within 10 days after it was lodged with the contracting officer, if the use of ADR fails to resolve it at any time, if the supplier is not satisfied with the contracting officer's resolution of the disagreement, or if the decision not to accept or consider proposals under § 601.105 is contested, the SDR Official is available to provide final resolution of the matter. The Postal Service desires to resolve all such matters quickly and inexpensively in keeping with the regulations in this part.

(b) *Scope and applicability.* This procedure is established as the sole and exclusive means to resolve disagreements under § 601.107 and contests of decisions under § 601.105. This procedure is intended to expeditiously resolve disagreements that are not resolved at the responsible contracting officer level; to reduce litigation expenses, inconvenience, and other costs for all parties; to facilitate successful business relationships with Postal Service suppliers, the supplier community, and other persons; and to develop further the basis for the Postal Service's purchasing decisions and the administrative records concerning those decisions. All disagreements under § 601.107 and contests of decisions under § 601.105 will be lodged with and resolved, with finality, by the SDR Official under and in accordance with the sole and exclusive procedure established in this section.

(c) *Lodging.* The disagreement under § 601.107 or contest of decision under § 601.105 must be lodged with the SDR Official in writing via facsimile, e-mail, hand delivery, or U.S. Mail. The disagreement under § 601.107 or contest of decision under § 601.105 must state the factual circumstances relating to it and the remedy sought. A disagreement under § 601.107 must also state the scope and outcome of the initial dis-

agreement resolution attempt with the contracting officer. The address of the SDR Official is: Room 4130 (Attn: SDR Official), United States Postal Service Headquarters, 475 L'Enfant Plaza, SW., Washington, DC 20260-4130. e-mail Address: *SDROfficial@usps.gov*. Fax Number: (202) 268-0075.

(d) *Lodging timeframes.* Disagreements under § 601.107 or contests of decisions under § 601.105 must be lodged with the SDR Official within the following timeframes:

(1) Disagreements under § 601.107 not resolved with the contracting officer must be lodged with the SDR Official within 20 days after they were lodged with the contracting officer (unless ADR had been used to attempt to resolve them);

(2) Disagreements under § 601.107 for which ADR had been agreed to be used must be lodged with the SDR Official within 10 days after the supplier knew or was informed by the contracting officer or otherwise that the matter was not resolved;

(3) Where a supplier is dissatisfied with the contracting officer's resolution of a disagreement under § 601.107, the supplier must lodge the disagreement with the SDR Official within 10 days after the supplier first receives notification of the contracting officer's resolution; and

(4) Contests of decisions under § 601.105 to decline to accept or consider proposals must be lodged with the SDR Official within 10 days of the supplier's receipt of the written notice explaining the decision.

(5) The SDR Official may grant an extension of time to lodge a disagreement under § 601.107 or contest of decision under § 601.105 or to provide supporting information when warranted. Any request for an extension must set forth the reasons for the request, be made in writing, and be delivered to the SDR Official on or before the time to lodge a disagreement lapses.

(e) *Disagreement decision process.* The SDR Official will promptly provide a copy of a disagreement to the contracting officer, who will promptly notify other interested parties. The SDR Official will consider a disagreement and any response by other interested parties and appropriate Postal Service

officials within a time frame established by the SDR Official. The SDR Official may also meet individually or jointly with the person or organization lodging the disagreement, other interested parties, and/or Postal Service officials, and may undertake other activities in order to obtain materials, information, or advice that may help to resolve the disagreement. The person or organization lodging the disagreement, other interested parties, or Postal Service officials must promptly provide all relevant, nonprivileged materials and other information requested by the SDR Official. If a submission contains trade secrets or other confidential information, it should be accompanied by a copy of the submission from which the confidential matter has been redacted. The SDR Official will determine whether any redactions are appropriate and will be solely responsible for determining the treatment of any redacted materials. After obtaining such information, materials, and advice as may be needed, the SDR Official will promptly issue a written decision resolving the disagreement and will deliver the decision to the person or organization lodging the disagreement, other interested parties, and appropriate Postal Service officials. When resolving a disagreement raised under § 601.107, the SDR Official may grant remedies including, but not limited to, the following:

- (1) Directing the contracting officer to revise the solicitation or to issue a new solicitation;
- (2) Directing the contracting officer to recompile the requirement;
- (3) Directing the contracting officer to reevaluate the award on the basis of current proposals and the evaluation factors contained in the solicitation; and
- (4) Directing the contracting officer to terminate the contract or to refrain from exercising options under the contract.

(f) *Guidance.* The SDR Official will be guided by the regulations contained in this part and all applicable public laws enacted by Congress. Non-Postal Service procurement rules or regulations and revoked Postal Service regulations will not apply or be taken into account. Failure of any party to provide

requested information may be taken into account by the SDR Official in the decision.

(g) *Final resolution by the SDR Official and final contract award of the Postal Service.* A resolution by the SDR Official will be final and binding. If the SDR Official's final resolution affirms the original contract award of the contracting officer, the contracting officer's original contract award becomes the Postal Service's final contract award, and may be subject to judicial review as described in paragraph (h) of this section. If the SDR Official's final resolution directs that the Postal Service terminate the contract award and issue a new solicitation, recompile the requirement, or reevaluate the current award, the contracting officer shall implement promptly the SDR Official's final resolution. However, any contract award made by the contracting officer after a resolicitation, recompetition, or reevaluation directed by the SDR Official is not a final contract award of the Postal Service that may be subject to judicial review unless and until disagreements concerning that contract award have been lodged and resolved with finality by the SDR Official.

(h) *Judicial review.* The Postal Service's final contract award, as described in paragraph § 601.108(g), may be appealed to a Federal court with jurisdiction based only upon an alleged violation of the regulations contained in this part or an applicable public law enacted by Congress. The party lodging the disagreement may seek review of the Postal Service's final contract award only after the mandatory administrative remedies provided under § 601.107 and § 601.108 have been exhausted.

(i) *Resolution timeframe.* It is intended that this procedure generally will resolve disagreements under § 601.107 or contests of decisions under § 601.105 within approximately 30 days after receipt by the SDR Official. The time may be shortened or lengthened depending on the complexity of the issues and other relevant considerations.

[75 FR 1542, Jan. 12, 2010]

§ 601.109 Contract claims and disputes.

(a) *General.* This section implements the Contract Disputes Act of 1978, as